

INFORMATIONAL 2

CHAPTER 7. MASSAGE ESTABLISHMENTS, AND TECHNICIANS*

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* Editor's Note: Ord. No. 2473, § 1, adopted July 9, 2002, repealed ch. 7, §§ 4-7100—4-7174, in their entirety. Said ordinance further provided for the inclusion of a new chapter 7 to read as herein set out. Formerly, said chapter pertained to similar subject matter as enacted by Ord. No. 2095, § 1, adopted Nov. 22, 1994. See the Table of Amendments for a detailed analysis of inclusion.

Sec. 4-7100. Findings and intent.

(a) In adopting these regulations, the City Council of the City of Fremont finds that therapeutic massage is a viable professional field offering the public valuable health benefits.

(b) State law allows cities to license massage establishments and those persons who provide massage services.

(c) The operation of massage establishments in accordance with the provisions of these regulations will reduce the negative impacts to the public health, safety and welfare that may result from unregulated individuals engaging in the business of providing massage services.

(d) Given the absence of comprehensive state regulations, local regulation of massage establishments and those who provide massage services is necessary to protect the public health, safety and welfare by:

(1) Requiring a clean and safe environment for massage services by providing minimum building, sanitation and health standards for massage establishments;

- (2) Providing minimum standards for the education, training and conduct of those who provide massage services to ensure that those individuals are qualified and properly trained and will conduct their work in a lawful and professional manner; and
 - (3) Enhancing public confidence in those who provide massage services within the City of Fremont.
- (Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7101. Definitions.

For the purposes of this chapter, the words, terms and phrases used in this section have the meanings described below unless the context clearly requires a different meaning.

“Applicant” means any person who submits an application for a massage establishment license or massage technician or massage establishment administrator permit.

“Client” means any person who receives or who is about to receive massage services.

“Conditional use permit” means the land use permit defined by Title VIII, Chapter 2 of this Code and as required by that chapter for a massage establishment to operate in a particular building or at a particular site within the City of Fremont.

“Fully clothed” means clothed from two inches below the clavicle to mid-thigh, including the torso, in opaque clothing.

“Hotel” means any lodging establishment required to remit transient occupancy taxes to the City of Fremont under applicable provisions of the Fremont Municipal Code.

“License” means the license to operate a massage establishment as required by this chapter.

“Licensee” means a holder of a license under this chapter.

“License authority” means the City of Fremont employee designated by the city manager to administer this chapter.

“Massage” means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or other parts of the body or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without the use of rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations. Massage includes, but is not limited to, shiatsu, acupressure or similar activities.

“Massage establishment” means any establishment having a fixed place of business where any person provides, receives, or permits others to provide or receive massage services. Massage establishment includes, but is not limited to, any beauty salon, hot tub or sauna facility, health and fitness center or tanning salon in which massage services are provided to customers.

“Massage establishment administrator” means a person designated by the licensee to have responsibility for the massage establishment’s operation in the licensee’s absence.

“Massage establishment personnel” means a licensee, a massage technician, a massage establishment administrator, or any other person employed by or acting on behalf of the licensee or massage establishment.

“Massage services” means providing massage(s) or bath, shower or health treatments including, but not limited to, vapor, shower, whirlpool tub, sponge, hot towel, relaxation services, sauna or steam involving any element of Massage in exchange for compensation of any type. Massage services includes offering “free” massage in conjunction with other goods or services provided in exchange for compensation of any type. “Massage services” does not include the trading of massages between massage technician permittees.

"Massage technician" means any person who provides massage services to another person.

"Permit" means the permit to engage in either the activities of a massage technician or massage establishment administrator as required by this chapter.

"Permittee" means a holder of a permit under this chapter.

"Person" means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

"Recognized school of massage" means any school or institution of learning approved by either the State of California Department of Education, or with the approval of the license authority another state's regulatory agency, as a vocational or postsecondary institution where the theory, ethics, practice, method, profession or work of massage, including the study of anatomy and physiology, or bath or health practice in relation to massage are taught. The school or institution must require a resident course of study of not less than one hundred hours of non-repetitive instruction and provide a diploma or certificate of graduation upon course of study completion. A school allowing correspondence course credit without actual attendance at class is not a recognized school of massage for the purpose of this chapter.

"Specified anatomical areas" includes the following human anatomical areas: genitals, anuses, and the area of the female breasts that includes the areola and nipple.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7102. Exemptions.

This chapter does not require the following individuals to have a license or permit under this chapter to perform the duties of their respective professions:

(1) Any individual licensed to practice any healing art under the provisions of Division 2, commencing with Section 500, of the California Business and Professions Code while engaging in practice within the scope of their license;

(2) Barbers, cosmetologists, estheticians, manicurists, electrologists or other individuals licensed under Chapter 10 of Division 3, commencing with Section 7300, of the California Business and Professions Code, while engaging in practice within the scope of their license;

(3) Qualified individuals performing massages to persons participating in road races, track meets, triathlons and similar single-occurrence athletic, recreational or promotional events;

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7104. Application of this chapter to pre-existing licenses or permits

(a) This chapter applies to all massage establishments that lawfully existed in the city, and to persons who held valid permits issued by the city, before the effective date of this chapter. Pre-existing licenses and permits shall continue to be valid until their expiration.

(b) In order to renew a pre-existing license or permit, the licensee or permittee must timely file a new application under this chapter and pay all applicable fees. In addition, pre-existing massage technician permit holders must have either:

(1) Passed the National Massage Certification Examination; or

(2) Passed the City of Fremont written or practical examination no later than three months after the date of the renewal application.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7105. License or permit application fees.

Any application for a new massage establishment license, massage technician permit or massage establishment administrator permit must be accompanied by a nonrefundable fee in an amount established by resolution of the city council. The city will use the application fee to defray, in part, the costs of investigation and report. The

fee is not paid in lieu of any other fees or taxes required under this chapter. A licensee who applies for a massage technician permit to perform massage services in the licensed establishment does not have to pay the fee required by this section for the massage technician permit. A massage technician permit holder who applies for a massage establishment administrator permit to operate in the same massage establishment where the technician is employed does not have to pay the fee required by this section for the massage establishment administrator permit.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7106. Renewal of license or permit.

(a) Massage establishment licenses, massage technician permits and massage establishment administrator permits expire annually on the anniversary date of their issuance, unless revoked sooner by the city manager or court order, or surrendered. It is the responsibility of the license or permit holder to timely submit a renewal application, including all required supporting documentation, to the license authority. Failure to submit a timely renewal application may result in the expiration of the license or permit before the renewal application is granted or denied.

(b) The license or permit holder must include a nonrefundable fee in an amount established by resolution of the city council with the renewal application. The city will use the fee to defray, in part, the costs of investigation and report. The fee is not paid in lieu of any other fees or taxes required under this chapter.

(c) Failure to comply with this Section's requirements will result in the license or permit expiring one year from the date of issuance.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7107. Additional annual requirements for renewal of technician permit.

(a) Massage technician permit holders must submit with their renewal application a certificate from a physician licensed to practice in the State of California stating that the applicant has, within thirty days immediately before filing the application, tested negative for the presence of tuberculosis. If the applicant has tested positive, the applicant must submit documentation from a physician licensed to practice in the State of California that the tuberculosis is not in an active state and the applicant is asymptomatic.

(b) To be eligible to renew his or her permit, a massage technician permit holder must complete at least four hours of continuing massage education from a recognized school of massage or any organization recognized by the State of California or a National Massage Certification Board or approved by the license authority. The permit holder must submit documentation with their renewal application demonstrating that they have completed this requirement.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7108. Grant or denial of a license or permit.

(a) Except as otherwise provided in this chapter, the license authority must grant or deny an application for a new license or permit or the renewal of a license or permit within sixty days of submission of a complete application and all required supporting documents. A decision by the license authority to grant or deny an application for a license or permit is final and conclusive.

(b) The license authority may deny a license or permit application for one or more of the following reasons:

(1) The application is incomplete and required supplementary documents are not submitted within twenty days of a request for these documents by the license authority. In addition to any other material omission, an application for a massage technician permit is incomplete if the license authority has not received passing test results for the applicant within three months of the application date. An applicant

whose application is denied for failure to comply with this subsection is not eligible to reapply for one year;

(2) The applicant made a material misstatement or omission in the application or in a previous application. But if the license authority finds substantial evidence that an application contains a knowing or intentional material misstatement or omission, the license authority must deny the application. If the license authority determines that an applicant made a material misstatement or omission, the applicant is not eligible to apply for a license or permit under this chapter for one year from the date the application is denied, but if the applicant made a knowing or intentional material misstatement or omission, the applicant is not eligible to reapply for five years;

(3) The applicant has engaged in disqualifying conduct, as described in section 4-7160 of this chapter; or,

(4) The applicant has previously held a massage establishment license, massage technician or massage establishment administrator permit or similar permit, certificate or license that the City of Fremont or any other public agency has suspended or revoked.

(c) In addition to the grounds specified in subsection (b), the license authority may deny a License application for one or more of the following reasons:

(1) The massage establishment, as proposed by the applicant, would not comply with all applicable laws including, but not limited to, the provisions of this Code. An applicant whose application is denied for failure to comply with this subsection is not eligible to reapply for one year;

(2) The applicant proposes to locate the massage establishment in the same building as a massage establishment that surrendered its license or had its license revoked within ten years of the application date because a person engaged in any of the conduct defined as disqualifying conduct by section 4-7160 while on the premises of the massage establishment. This subsection does not apply to renewal applications; or,

(3) The massage establishment, as proposed by the applicant, would be located in a building zoned for residential or sleeping purposes.

(d) If prosecution is pending against the applicant for either conduct listed in section 4-7160 or for conduct violating this chapter's provisions, the license authority may postpone its decision on the application until the prosecution's final resolution. As used in this subsection, prosecution means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil action maintained by the City of Fremont City Attorney.

(e) The license authority may postpone its decision on a license or permit application until the City of Fremont receives the applicant's fingerprint review results from the California Department of Justice.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7110. Massage establishment license.

(a) It is unlawful for any Person to operate or to permit the operation of a massage establishment on any premises within the City of Fremont without a valid conditional use permit and a valid massage establishment license from the license authority.

(b) Massage provided by the holder of a valid massage technician permit in full view of other customers, patrons and the general public to fully clothed clients as an accessory to retail sale of goods is exempt from the license requirements of this section as long as the retail establishment:

(1) Occupies space of at least ten thousand square feet at any one location;

(2) Offers merchandise for sale and the retail and storage space for that merchandise occupies at least ninety percent of the total floor space in the establishment; and,

(3) Allows no more than two stations for provision of such massage in the establishment.

(c) It is unlawful for a person to open or operate a massage establishment within the City of Fremont without first registering and paying for a city business tax as required by this Code.
(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7111. Massage establishment license application.

(a) All massage establishment applications must be submitted to the license authority on a form provided by the license authority.

(b) The applicant must describe in the application the exact nature of the massage services to be provided under the license as well as the exact nature of any other services available and the proposed place of business and facilities.

(c) The applicant must include the following information in the application:

(1) Applicant's full name, including any nicknames, aliases or other names used presently or in the past, present business and residential addresses, present business and residential telephone numbers for each address, and business website, if any;

(2) All of applicant's previous business and residential addresses for the five years immediately before the application date and the dates that applicant located his business or residence at each address;

(3) Acceptable documentation that the applicant is at least eighteen years of age;

(4) Applicant's physical description, including gender, height, weight, color of eyes and hair;

(5) Applicant's fingerprints and two recent color passport size photographs of the applicant showing full face view for the purpose of establishing identification;

(6) Applicant's current and former driver's license numbers for the period of five years immediately before the application date, if any, including state of issuance, and social security number;

(7) Applicant's history of involvement in the massage profession, including the operation of massage establishments or similar businesses, or involvement in similar occupations, within the last ten years. This information must include, a statement as to whether the applicant has ever held a license, certificate or permit related to the practice of massage, or the operation of a massage establishment, or other business involving the practice of massage or provision of massage services and the name and location of the jurisdiction issuing such license, certificate or permit. The applicant must also identify any license, certificate or permit that was suspended, revoked or surrendered within the ten years before the date of the application, the dates and reasons for any suspensions, revocations, or surrender, and the name and location of the jurisdiction or public agency that suspended or revoked the license, permit or certificate or to which the license, permit or certificate was surrendered;

(8) Applicant's criminal convictions for offenses other than traffic violations within ten years before the date of the application;

(9) Any criminal charges pending against the applicant at the time of the application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers;

(10) If the applicant is a corporation, the name of the corporation must be set forth exactly as shown in its articles of incorporation, together with the state of incorporation, a statement as to whether the corporation is on good standing, the identity and address of all businesses and subsidiary corporations owned or operated, wholly or partially, by the corporation, a list of all current and past fictitious business names for the corporation as well as all current and past fictitious business names for businesses and subsidiary corporations owned or operated, wholly or partially, by the corporation, and all of the required information in subsections (1) through (9) above for each of its officers, directors, and each stockholder holding more than ten percent of stock in the corporation. If the Applicant is a corporation wholly or partially owned or

controlled by another corporation, the application must include all of the information required of a corporate applicant in this subsection for each corporation wholly or partially owning or controlling the applicant.

(11) If the applicant is a partnership, the application must include all of the required information in subsections (1) through (9) above for all partners, including limited partners, and a copy of the partnership agreement. If one or more of the partners is a corporation, the application must include all of the information required of a corporate applicant in subsection (10) for each corporate partner;

(12) The name and address of the property owner(s), lessor(s) and lender(s) holding a lien or other interest in the property, if applicable. The applicant must submit proof of having provided written notice by certified mail to each owner, and lessor informing them of the application for the massage establishment license on the premise;

(13) For each private lender, the application must include all of the required information in subsections (1) through (9) above. For the purposes of this subsection, a "private lender" is any lender other than a financial institution;

(14) A statement in writing by the applicant that he or she certifies under penalty of perjury that the information provided in the application is true and correct;

(15) Authorization for the City of Fremont, its agents and employees to conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license;

(16) A statement, signed in the presence of the license authority, attesting that the applicant has read and understood all City of Fremont Codes pertaining to massage or provision of massage services; and

(17) Any additional information required by the license authority needed for review and approval of the application.
(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7112. Massage establishment operating requirements.

A licensee, his authorized agents, and all massage establishment personnel must comply with, and not permit anyone to violate the following requirements:

(1) The massage establishment license and the permit of each and every massage technician and massage establishment administrator, if any, employed or operating in the massage establishment must be conspicuously displayed in the facility such that it can easily be seen by anyone entering the establishment;

(2) The main external entrance doors into the massage establishment must remain unlocked during business hours;

(3) Minimum lighting equivalent to at least one artificial light of not less than forty watts must be provided in each room where massage services are provided;

(4) Minimum ventilation must be provided in accordance with applicable building code provisions;

(5) The licensee must designate or employ a massage establishment administrator to be in charge of the operation of the business during all times that the licensee is not personally managing the business. The name of the person currently in charge of the massage establishment must appear in the daily register. Either the licensee or designated massage establishment administrator must be present at the massage establishment at all times during business hours that:

a. Any massage establishment Personnel other than a single receptionist is present at the massage establishment;

b. Any member of the public is in any room of the massage establishment other than the retail portion or reception area; or,

c. Notwithstanding subsection b., any person occupies a massage room.

(6) Customers must pay for massage services at the reception counter. All tips, if any, must be received at the reception counter;

(7) Each massage service offered must be posted together with the price for the service in a conspicuous place in the reception area. A massage establishment must not provide or charge for any service other than those posted;

(8) Daily register.

a. All massage establishments must keep a daily register which lists the full name and address of each client, the date, time, type and duration of massage service, price, any tips received from the client, the amount paid for the massage services provided, and the name of the massage technician assigned to performed the massage service. A complete entry for each client, except for the amount actually paid, must be made before the client receives any massage services. The amount paid for massage services and any tip given by a client must be separately identified and must be recorded in the daily log when received. A client may change the type or duration of massage service once a massage has begun but the change in service and price must be recorded in the daily register before the additional or different massage service is provided.

b. A client's address is not required to be entered into the register if the massage establishment maintains the client's address on a separate standardized form or computer database.

c. It is the responsibility of the licensee or massage establishment administrator to ensure that no false names or addresses are accepted on the register. If the licensee or administrator questions the name or address provided by a client, the licensee or administrator must require proof of identification from the client.

d. All information entered in the register and any separately kept client address information must be kept on file at the premises for one year from the date of service and immediately made available upon request to the license authority.

(9) Before providing massage services, a massage technician must obtain a completed current medical history form for each prospective client on a form approved by the license authority;

(10) A massage establishment may be open between 7:00 a.m. and 10:00 p.m. but must be closed for business at all other times. The Licensee must not permit anyone in the massage establishment between 12:00 a.m. and 6:00 a.m., except for licensees, their immediate family, and registered janitorial services personnel, except as authorized in writing by the license authority;

(11) Massage services must be performed on professional massage tables or massage chairs. Massage services may be performed on a mat but only with fully clothed clients. The licensee and his authorized agents may provide couches in an employee break area or reception area but must not provide or permit couches in massage rooms. Cots, beds, mattresses or futons are not allowed in a massage establishment;

(12) Massage establishment personnel must to be fully clothed in acceptable professional attire while on the premises of the massage establishment. This subsection is regulatory only;

(13) The licensee or his authorized agents must report any changes in business practice, services offered, days and hours of operation, and employees or independent contractors to the license authority at least five days in advance of the change. If it is not possible to give advance notice of the change, such as in the case of an unexpected resignation or termination, the licensee or his authorized agents must notify the license authority of the change within five days;

(14) Comply with all applicable provisions of this Code;

(15) A licensee must maintain documentation establishing that each employee or independent contractor working in the massage establishment legally is allowed to work in the United States and holds a valid permit under this chapter.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7113. Massage establishment sanitation requirements.

A licensee, his authorized agents, and all massage establishment personnel must comply with the following requirements. It is unlawful for a massage establishment to operate in violation of any of these requirements.

- (1) Provide a minimum of one toilet and washbasin with handicap accessibility in the massage establishment.
 - (2) Provide cabinets or other covered space for the storage of clean linen, and provide approved receptacles for the storage of all soiled linen and paper towels.
 - (3) Provide hot and cold running water. Provide soap and single-service paper towels in wall mounted dispensers for all lavatories and washbasins.
 - (4) Provide washable mold-resistant surfaces on all walls in rooms where water or steam baths are given.
 - (5) Maintain the massage establishment facility in a clean and sanitary condition and thoroughly clean the facility each day of operation.
 - (6) Ensure that the massage establishment facility meets all code requirements of the city, including but not limited to those related to safety of the structure, adequacy of the plumbing, heating, ventilating and waterproofing of rooms in which showers, water or steam baths are used.
 - (7) Provide clean, laundered sheets, towels, and linen in sufficient quantity for use by clients. Launder the linens after each use and store them in a sanitary manner. Do not permit common use of linens or towels. Heavy white paper may be substituted for sheets on massage tables, so long as such paper is used only once for each client and is then discarded into a sanitary receptacle.
 - (8) Cover pads used on massage tables with durable, washable plastic or other acceptable waterproof material.
 - (9) Provide disinfecting agents and sterilizing equipment for any instruments used in performing massage and disinfect or sterilize, or both as appropriate, the instruments after each use.
- (Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7114. Advertisement.

All advertisements for a massage establishment must reflect the professional non-sexual nature of the business. A licensee or any person acting on behalf of the licensee must not place, publish or distribute or cause to be placed, published or distributed any advertising matter regarding the massage establishment that contains text, or depicts any portion of the human body, that would reasonably suggest to prospective clients that a service is available that is not a legitimate, recognized massage service. This section is regulatory only.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7115. Inspection by officials.

(a) The license authority and the investigating and enforcing officials of the City of Fremont or their designees, have the right to enter any massage establishment during regular business hours to inspect and enforce compliance with this Code.

(b) If the license authority provides timely written notice of a violation discovered during a massage establishment inspection, the violation may be used by the license authority as the basis for an administrative disciplinary action under this chapter. The notification must:

- (1) Set forth the specific violation(s) found;
 - (2) State that failure to comply with any notice of violation issued under this chapter may result in the license authority filing a complaint for revocation or suspension of the license or permit, in addition to any other legal remedies that the City of Fremont may pursue.
- (Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7118. Change of business location.

It is unlawful to change a massage establishment's location without first obtaining the license authority's written approval and a new conditional use permit. It is the licensee's responsibility to timely submit an application to change the location of the massage establishment.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7119. Sale or transfer of massage establishment interest.

A licensee must report to the license authority the sale or transfer of any interest in a massage establishment before finalization of the transaction along with the completed application of any person who will receive an interest in the massage establishment. If a person receives an interest in a massage establishment, the license authority may suspend or revoke the license if the person failed to timely submit an application or pay an investigation fee, or the license authority denies the application for any of the reasons specified in section 4-7108 (b) or (c).

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7120. Massage technician permit.

(a) It is unlawful for any person to act as a massage technician within the City of Fremont unless the person holds a valid massage technician permit.

(b) With the exception of massage technicians who are employees of a properly licensed massage establishment performing massage services for the massage establishment within the City of Fremont, it is unlawful for any massage technician to operate without first registering and paying a city business tax and obtaining a home occupation permit, if applicable, under this Code.

(c) The license authority may issue a temporary massage technician permit after submission of a complete application. This temporary permit is intended as an accommodation to the licensee and may be terminated upon review of the massage technician permit application or investigation results. A temporary permit expires on the earlier of the following dates:

(1) Thirty days after it is issued, unless the license authority proscribes a shorter time;

(2) The license authority grants or denies the application.

The license authority may renew a temporary permit.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7121. Massage technician permit application.

(a) All massage technician applications must be submitted to the license authority on a form provided by the license authority.

(b) The applicant must include the following in the application:

(1) Applicant's full name, including any nicknames, aliases, or other names used presently or in the past, and present business and residential addresses and telephone numbers;

(2) Applicant's business and residential addresses for the five years immediately before the application date and the dates that the applicant worked or resided at each address;

(3) Acceptable documentation that the applicant is at least eighteen years of age;

(4) Applicant's physical description including gender, height, weight, color of eyes and hair;

(5) Applicant's fingerprints and two recent color passport size photographs of the applicant showing full face view for the purpose of establishing identification;

(6) Applicant's current and former driver's license numbers for the five years immediately before the application date, if any, including state of issuance and social security number;

(7) Certificate from a physician licensed to practice in the State of California stating that the applicant has, within thirty days immediately before the filing of the application, tested negative for tuberculosis. If the Applicant has tested positive, the applicant must submit documentation from a physician licensed to practice in the State of California that the tuberculosis is not in an active state and the applicant is asymptomatic;

(8) Applicant's occupation for the five years immediately before the date of application;

(9) The name, address, and letter of employment from the massage establishment that is or will be employing the applicant, if any, and the name of the owner or operator of same;

(10) Applicant's criminal convictions for offenses other than traffic violations within ten years before the application date;

(11) Any criminal charges pending against the applicant at the time of application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers;

(12) Applicant's history of involvement in the massage profession, including the practice of massage, the operation of massage establishments, or similar occupations or businesses, within the last ten years. The applicant must also identify any license, certificate or permit that was suspended, revoked or surrendered within the ten years before the date of the application, the dates and reasons for any suspensions, revocations, or surrender and the name and location of the jurisdiction or public agency that suspended or revoked the license, permit or certificate or to which the license, permit or certificate was surrendered;

(13) The applicant must provide written proof that they have completed one hundred hours of instruction at a recognized school of massage and successfully completed the written test and practical performance examination conducted by the City of Fremont as described in section 4-7122;

(14) A written statement signed under penalty of perjury by the applicant that the information provided in the application is true and correct;

(15) Written authorization for the City of Fremont, its agents and employees to investigate the accuracy and completeness of the information provided in the application and the qualifications of the applicant for the permit;

(16) A statement signed in the presence of the license authority that the applicant has read and understood all City of Fremont Codes pertaining to massage or provision of massage services;

(17) Any additional information required by the license authority for review and approval of the application.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7122. Massage technician permit examination.

(a) Each applicant must demonstrate a basic knowledge of anatomy, physiology, hygiene and massage by successfully completing an examination consisting of both a written test and a practical performance examination. The applicant must pass the test with a score of no less than seventy percent on the written test and no less than seventy percent on the practical performance test.

(b) The tests will be administered through the City of Fremont within one month of a written request to take the tests. The city will provide seven days notice of the test date. If the applicant fails the written or practical portion of the test the first time, the person may submit a request at any time to retake the failed test. If the person fails the written or practical portion of the test the second time, the person must wait two months before submitting a request to retake the failed test.

(c) The written portion of the exam may be given orally if requested by the applicant.

(d) If the applicant requires the services of a translator during the examination, the applicant must arrange for a court certified translator to be present at the examination. The applicant is solely responsible to pay for the translator's services. No persons other than court certified translators, City of Fremont representatives, and examinees are allowed in the testing room during the written test or practical performance examination.

(e) The applicant must pay all costs associated with the testing directly to the authorized administrator of the tests.
(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7123. Permit requirements.

All permittees must comply with the following requirements:

- (1) All permittees must report any change in massage establishment employment or affiliation within five days;
 - (2) A permittee must conspicuously display an identification badge which contains his or her full name, photograph and permit expiration date while on the premises of a massage establishment or while performing massage services elsewhere;
 - (3) Comply with all applicable provisions of this chapter.
- (Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7130. Massage establishment administrator permit.

(a) It is unlawful for any person or massage technician to act as a massage establishment administrator unless the person holds a valid massage establishment administrator permit issued by the license authority. A massage establishment administrator permit does not authorize the permittee to provide massage services, and it is unlawful to do so without a valid massage technician permit issued by the license authority.

(b) With the exception of massage establishment administrators who are employees of a properly licensed massage establishment within the City of Fremont, it is unlawful for any massage establishment administrator to operate without first registering and paying a city business tax under this Code.
(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7131. Massage establishment administrator permit application.

(a) An applicant for a massage establishment administrator permit must submit the application to the license authority on a form provided by the license authority.

(b) The applicant must provide the following:

- (1) The applicant's full name, including any nicknames, aliases, or other names used presently or in the past, present business and residential addresses and telephone numbers for each address;
- (2) Applicant's business and residential addresses for the five years immediately before the application date, and the dates that applicant worked or resided at each address;
- (3) Acceptable documentation that the applicant is at least eighteen years of age;
- (4) Applicant's physical description including gender, height, weight, color of eyes and hair;
- (5) Applicant's fingerprints and two recent color passport size photographs of the applicant for the purpose of establishing identification;
- (6) Applicant's current and former driver's license numbers for the five years immediately before the application date, if any, including state of issuance and social security number;
- (7) Applicant's occupation for the five years immediately before the application date;

(8) The name, address, and letter of employment from the massage establishment that is or will be employing the applicant, and the name of the owner or operator of same;

(9) Applicant's criminal convictions for offenses other than traffic violations within ten years before the application date;

(10) Any criminal charges pending against the applicant at the time of application, other than traffic citations, the name and location of the court in which the criminal charges are pending and the applicable case numbers;

(11) Applicant's history of involvement within the last ten years in massage businesses, or similar occupations or businesses, including the practice of massage, the operation of massage businesses, and the supervision of massage business personnel. The applicant must also identify any license, certificate or permit that was suspended, revoked or surrendered within the ten years before the date of the application, the dates and reasons for any suspensions, revocations, or surrender, and the name and location of the jurisdiction or public agency that suspended or revoked the license, permit or certificate or to which the license, permit or certificate was surrendered;

(12) A written statement signed under penalty of perjury by the applicant that the information provided in the application is true and correct;

(13) Written authorization from the applicant for the City of Fremont, its agents and employees to investigate the accuracy and completeness of the information provided in the application and the qualifications of the applicant for the permit;

(14) A statement signed in the presence of the license authority that the applicant has read and understood all City of Fremont Codes pertaining to massage or provision of massage services;

(15) Any additional information required by the license authority for review and approval of the application.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7160. Disqualifying conduct.

A person has engaged in disqualifying conduct if:

(1) The person previously held a massage establishment license, massage technician or massage establishment administrator permit or similar permit, certificate or license that the City of Fremont or any other public agency suspended or revoked, or that the applicant surrendered while under investigation, subject to regulatory action including a notice of violation, or being prosecuted by a government entity in a civil or criminal proceeding, for violation of local, state or federal law;

(2) The person has been convicted of, or pled guilty or no contest to an offense that requires registration under California Penal Code Section 290, or which is a violation of Sections 266(i), 314, 315, 316, 318 or 647(b) or the Sections in Part 1, Title 9, Chapters 7.5 or 7.6 of the Penal Code or equivalent offenses under the laws of another jurisdiction, or any offense involving sexual misconduct with children or adults, even if expunged pursuant to Penal Code Section 1203.4;

(3) The person has been convicted of, or pled guilty or no contest to an offense involving the sale of a controlled substance specified in Sections 11054, 11055, 11056, 11057, 11058, 11351, 11352, 11358 through 11363 or 11378 through 11380 of the California Health and Safety Code, or equivalent offenses under the laws of another jurisdiction, even if expunged pursuant to Penal Code Section 1203.4;

(4) The person, any business owned or managed by the person while the person owned or managed the business, the person's current employer, or the person's former employer during the person's employment is or was a named party subject to a permanent injunction against the conducting or maintaining of a nuisance under Sections 11225 through 11235 of the California Penal Code, or Sections 11570

et seq. of the California Health and Safety Code, or equivalent offenses under the laws of another jurisdiction;

(5) The person has been convicted of, pled guilty or no contest to any offense involving the use of force or violence upon another person;

(6) The person was convicted of, or pled guilty or no contest to a violation of Penal Code Section 415 as a result of an arrest for violation of Penal Code Section 647(b);

(7) The person violated section 4-7161, prohibited conduct and was notified by the license authority of the violation;

(8) The person is or has worked at or operated a massage establishment, whether or not located in the City of Fremont, without required licenses or permits; or,

(9) The person has owned, managed, or received compensation from a massage establishment or outcall massage business, whether or not located in the City of Fremont, for which advertisements that would violate section 4-7114 were published.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7161. Prohibited conduct.

(a) Massage establishment personnel must not sell, serve, or furnish alcoholic beverages in the massage establishment unless the massage establishment has a valid license issued by the State of California, Alcoholic Beverage Control (ABC). Alcoholic beverages must not be consumed and massage establishment personnel must not allow a person to consume an alcoholic beverage in a massage establishment unless the establishment has complied with all applicable ABC requirements and the person consumes the alcohol beverage in designated areas away from any rooms where massage services are performed.

(b) Controlled substances must not be consumed in a massage establishment unless the person has a prescription for the substance.

(c) Access to dressing rooms, corridors or rooms where massage services are performed must not be obstructed in any manner and doors into these areas must not have locking devices.

(d) Massage establishment personnel must not allow television or video equipment in any room where massage services are being provided, but a security surveillance monitor that can only receive images of the inside of the establishment may be located in these rooms at any time.

(e) Condoms must not be kept or used for any purpose in the massage establishment.

(f) A client must not exchange money with massage establishment personnel for any purpose in the massage rooms.

(g) Massage establishment personnel must not perform, solicit or in any way make available or permit others to make available any service that is not specifically listed on the license application and that is not a legitimate, recognized massage service. Independent massage technicians must not perform, solicit or in any way make available or permit others to make available any service that is not a legitimate, recognized massage service in the course of providing massage services.

(h) It is unlawful for a person to provide massage services in a hotel room.

(i) A massage establishment must not be used for residential or sleeping purposes.

(j) Massage establishment personnel must not be nude, semi-nude, or dressed in lingerie, see-through or transparent attire while performing any task or service associated with the massage establishment. Independent massage technicians must not be nude, semi-nude, or dressed in lingerie, see-through or transparent attire while performing massage services.

(k) It is unlawful for a massage establishment to be operated under any name or designation not specified in the license.

(l) It is unlawful for surveillance cameras to be installed on the exterior of the massage establishment. Other surveillance cameras must not be maintained or operated so as to provide surveillance of the exterior of a massage establishment or the surrounding area.

(m) It is unlawful for any person to employ or permit any person to act as a massage technician or massage establishment administrator who is not in possession of a valid massage technician permit issued by the license authority.

(n) Massage establishment personnel or any massage technician must not expose their specified anatomical areas, pubic region, buttocks, or any part of their chest area from two inches below the clavicle and down in the course of providing any massage service.

(o) Massage establishment personnel or any massage technician must not massage or make intentional physical contact with the specified anatomical areas of any client in the course of providing any massage service.

(p) Massage establishment personnel or any massage technician must not permit any client to expose to view of any other person his or her specified anatomical areas or buttocks.

(q) Massage establishment personnel must not permit any client to make physical contact with the specified anatomical areas, pubic region, or buttocks of a permittee or any other person.

(r) A permittee must not permit a client to turn over in the course of a massage service unless:

(1) The client is wearing clothing that covers his or her specified anatomical areas and buttocks; or

(2) The permittee uses proper draping procedures to protect the client's specified anatomical areas and buttocks from exposure;

(s) No person other than the client and the client's immediate family or guardian is allowed in the massage room while the client is dressing or undressing.

(t) No person other than the client, the massage technician assigned to the client, and the client's immediate family or guardian are allowed in the massage room if any door into the massage room is closed. Others may be in the massage room so long as all doors to the room are fully open.

(u) Massage establishment personnel or any massage technician must not inquire as to whether any client is a peace officer.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7180. Suspension and revocation of license or permit.

(a) The city manager or his or her designee may suspend or revoke a License or permit under this chapter if substantial evidence exists of any of the following:

(1) The licensee or permittee engaged in disqualifying conduct described in section 4-7160 of this chapter;

(2) The licensee or permittee made a materially false or misleading statement or omission of fact on his or her license or permit application, or supplementary application documents;

(3) The licensee or massage establishment administrator is operating a massage establishment, or the permittee is providing massage in a manner that poses a danger to the health and safety of clients or the public;

(4) The licensee or permittee failed to correct a violation of this chapter after notification from the license authority;

(5) The licensee or permittee violated any provision of this chapter on more than two occasions, provided that the licensee or permittee received timely notice of each violation;

(6) The licensee or permittee violated any provision of this chapter and the license or permit was previously suspended for any violation of this chapter;

(7) A license may be suspended or revoked for violation of any provision of section 4-7161, prohibited conduct, by:

- a. Any massage establishment personnel, or
- b. Any client if massage establishment personnel allow the violation to continue or do not immediately correct the violation;

(8) The licensee knowingly hired, or continues to employ after notification from the license authority, a person to perform massage services or administer the establishment who does not hold a valid permit under this chapter.

(9) The licensee or permittee failed to pay city business tax as required by the Code;

(10) The massage establishment's operation violated the business's conditional use permit conditions or no longer complies with the Planning Code;

(11) The licensee failed to comply with section 4-7118, change of business location;

(12) The licensee or any person obtaining an interest in the massage establishment failed to comply with section 4-7119, sale or transfer of massage establishment interest;

(13) The operation of the massage establishment is or has become a public nuisance as defined by Sections 3479 et seq. of the California Civil Code or as declared by any provision of state law, this Code, or the City of Fremont City Council.

(14) Pre-existing permits may be revoked if the applicant fails to timely comply with the testing requirements of section 4-7104(b).

(b) The city manager or his or her designee may suspend a license or permit under this chapter if substantial evidence exists that:

(1) A licensee or permittee violated any applicable provision of this Code, or state or federal law.

(2) A licensee or permittee violated any provision of section 4-7112, massage establishment operating requirements, section 4-7113 massage establishment sanitary requirements, or Alameda County Department of Environmental Health regulations relating to proper sanitation or hygiene;

(3) A permittee violated any provision of section 4-7123, permit requirements.

(c) A licensee is responsible for any violation of this chapter's provision by massage establishment personnel, whether or not the licensee has knowledge of or condoned the misconduct.

(d) A massage establishment administrator is responsible for any violation of this chapter's provision existing or committed by massage establishment personnel while the massage establishment administrator is on the premises or on duty, whether or not the massage establishment administrator has knowledge of or condoned the misconduct.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7181. Procedure for revocation or suspension of license or permit.

(a) If the city manager or his or her designee proposes to suspend or revoke a license or permit, the city manager shall provide written notice as soon as reasonably practicable to the licensee or permittee of the grounds for the proposed suspension or revocation. The notice must state the effective date of the suspension or revocation, the length of any suspension imposed, and the alleged grounds for the revocation or suspension. The notice must be served on the licensee or permittee in person or by certified mail at the most recent home or business address on file.

(b) If a licensee or permittee wishes to contest a proposed suspension or revocation, he or she must request a hearing within fourteen days after receiving notice of the intended revocation or suspension. The request must be served on the city manager by mail or in person. If a licensee or permittee fails to timely or properly serve a hearing request, he or she waives the right to a hearing before suspension or revocation.

(c) If a hearing request is timely and properly served, a hearing must be held before a hearing officer before suspension or revocation.

(d) A hearing officer designated by the city manager shall preside at the hearing. The hearing officer's jurisdiction is limited to determining whether substantial evidence exists that a violation of this chapter has occurred, and if so, whether the violation provides grounds as specified in this chapter for suspension or revocation of the license or permit. If the hearing officer finds that grounds do not exist for revocation but do exist for suspension, the hearing officer must order the license or permit suspended. The hearing officers duties are to:

- (1) Receive evidence regarding the proposed suspension or revocation;
- (2) Preserve the evidence whether or not it is admitted;
- (3) Record the hearing on audio tape and preserve the tape for the record;

and,

- (4) Decide whether grounds exists for the suspension or revocation.

Both the licensee or permittee and the city have the right to appear and be represented by counsel, cross examine witnesses, and present evidence and arguments whether good cause exists for suspension or revocation.

(e) Within fourteen days following the hearing, the hearing officer must issue a written decision that states whether the license or permit is suspended, revoked, or that no grounds exist to either suspend or revoke the license or permit, the factual and legal basis for the decision, and a notice that the licensee or permittee may appeal any suspension or revocation as described in subsection (f) below. The decision of the hearing officer must be served on the licensee or permittee by in-person delivery at the most recent home or business address or by certified mail. The hearing officer's decision is effective on the date the decision is personally served on or mailed to the parties.

(f) The hearing officer's decision is subject to review under Code of Civil Procedure Section 1094.6. Any request for review must be filed within ninety days of service of the hearing officer's decision. The city council hereby expressly makes Code of Civil Procedure Section 1094.6 applicable to all proceedings for review of decisions under this chapter.

(Ord. No. 2473, § 1, 7-9-02.)

Sec. 4-7182. Enforcement.

The provisions of this chapter are enforceable by regulatory action by the license authority, a civil action for injunctive or other relief brought by the city attorney, and criminal proceedings as provided by Title 1, Chapter 3. Those provisions deemed "regulatory only" are not enforceable by criminal proceedings. The remedies described in this section are cumulative and in addition to any other remedies available that may be pursued to address a violation of this chapter.

(Ord. No. 2473, § 1, 7-9-02.)

This page of the Fremont Municipal Code is current through Ord. 3-2010, passed January 26, 2010.

Disclaimer: The City Clerk's Office has the official version of the Fremont Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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